

# Death of Labour Law?

## Comparative Perspectives

Martin Vranken



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*In memory of Dr Szakats (1915–2001)*



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## Abbreviations

AC	Appeal Cases
ACJ	Arbitration Court Judgments
ACTU	Australian Council of Trade Unions
AFL	American Federation of Labor
AILR	Australian Industrial Law Reports
ALR	Australian Law Reports
APEC	Asia-Pacific Economic Cooperation
ATR	Australian Taxation Reports
AWA	Australian Workplace Agreement
Benelux	Belgium, the Netherlands, Luxembourg
BGB	<i>Bürgerliches Gesetzbuch</i>
C	Case
CA	Court of Appeal
CAR	Commonwealth Arbitration Reports
CIO	Congress of Industrial Organizations
CLR	Commonwealth Law Reports
CMLR	Common Market Law Reports
Cth	Commonwealth
EC	European Community
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
ETUC	European Trade Union Confederation
EU	European Union
Euratom	European Atomic Energy Community
HCA	High Court of Australia
ILO	International Labour Organization
IR	Industrial Reports
ITEA	Individual Transitional Employment Agreement
KB	King's Bench
L	Legislation
MB	Management Board
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization

NES	National Employment Standards
NLRA	National Labor Relations Act
NZLR	New Zealand Law Reports
OECD	Organisation for Economic Co-operation and Development
OEEC	Organisation for European Economic Co-operation
P	President
QB	Queen's Bench
SB	Supervisory Board
SE	<i>Societas Europaea</i>
SEA	Single European Act
SH	Shareholders
SME	Small and Medium (-sized) Enterprise
TCR	Termination, Change and Redundancy
TEU	Treaty on European Union
UNICE	Union of Industrial and Employers' Confederations of Europe



## Preface

Labour law is no longer the trendy subject to research and teach it once was. In Europe the golden period of labour law lies squarely in the 1960s (at a national level) and in the 1970s (at the supranational level of what was then called the European Economic Community). Today the bright young minds of legal scholars with a social conscience tend to be focused on areas such as environmental law or, even more in vogue, refugee law and international human rights. Labour law, as a major object of study in its own right, risks rapidly becoming a relic of the past.

At one level this book has been written by way of a nostalgic reflex. It retraces the birth and subsequent growth, especially after World War II, of labour law as an autonomous academic discipline. It demonstrates the gradual fall from grace of labour law as a *Sonderdisziplin* ('special discipline')—as the Germans would have it, commencing with the deregulation movement of the 1980s but continuing long after Reaganomics and Thatcherism gave way to the new buzz words of 'globalisation' and 'international competitiveness'. However, the purpose of this book is not to add to the existing literature of tirades against the free market. Publications with such suggestive titles as *Travail flexible, salariés jetables*<sup>1</sup> (*Flexible Work, Throw-Away Employees*), edited by French economist Michel Husson, while undoubtedly thought-provoking, can be overly negative and needlessly cynical.

Instead, *Death of Labour Law?* seeks to invite constructive debate about the relevance of labour law in shaping the social fabric of the Western industrialised world for the twenty-first century. The book has been written in the firm belief that labour law, even when defined narrowly in terms of employee protection law, must continue to have a role that is equal in importance, rather than merely subservient, to the perceived imperatives of a globalised economy. Civilised society, now and into the future, depends on a proper balance between stability and flexibility. In Europe a newly coined term in this regard is 'flexicurity'. This term represents the focal point of an influential Green Paper by the European Commission on modernising labour law in the twenty-seven member states of the European Union. Parallels can be drawn with the legislative reform agenda of the

Rudd-Gillard administration in Australia where a revamped system of collective (workplace) bargaining is meant to operate against the double backdrop of a 'reinforced' floor of statutory employee entitlements and a 'modernised' award system.

For an Australian audience the immediate relevance of the book derives from the 'Forward with Fairness' approach to the labour law reform agenda of the Rudd government. New Zealand readers, for their part, may wish to peruse this text against the backdrop of particularly challenging parliamentary elections faced by the Labour-led coalition of Helen Clark in late 2008.

When writing an initial draft of the manuscript I had occasion to test some of my ideas on some unsuspecting, yet willing participants in a summer course organised by Louisiana State University at the University of Lyon III in France. I am grateful to then Chancellor Costonis for this opportunity. A visiting professorship to teach comparative labour law at the University of Virginia allowed further useful feedback and fine-tuning. I also wish to put on record my sincere appreciation of the warm hospitality received from European colleagues at the University of Leuven over many years.

Melbourne, Solstice Day, 2008

## Notes

- 1 Husson, *Travail flexible, salariés jetables. Fausses questions et vrais enjeux de la lutte contre le chômage*.